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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,602	01/17/2002	William A. Baker	5893.02	1121

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DORSEY & WHITNEY, LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
370 SEVENTEENTH STREET  
SUITE 4700  
DENVER, CO 80202-5647

EXAMINER

NGUYEN, TAM M

ART UNIT PAPER NUMBER

3764

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/051,602	<b>Applicant(s)</b> BAKER, WILLIAM A.	
	<b>Examiner</b> Tam Nguyen	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.  
     4a) Of the above claim(s) 33-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19, 22 and 24-33 is/are rejected.
- 7) ☒ Claim(s) 3, 20, 21 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/24/02, 8/19/02, 9/24/02, 11/18/02, 6/25/03</u>                          | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 34-55 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected Inventions II and III, there being no allowable generic or linking claim. Claims 34-55 are cancelled per Applicant's cancellation of the claims in the reply filed on July 13, 2004.

### ***Specification***

2. The disclosure is objected to because of the following informalities:

Page 7, line 26, delete "stamped steal" and insert --stamped steel--.

Appropriate correction is required.

### ***Claim Objections***

3. Claim 3 is objected to because of the following informalities:

Claim 3, line 3, delete "monoframe" and insert --monoframe.--

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 16-23 and 28-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 16 recites the limitation "the bottom support" in line 1. There is insufficient antecedent basis for this limitation in the claim. It appears that the applicant intended to use the term "top support" and the examiner will

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assume as much in order to expedite the prosecution. Claim 22 recites the limitation "the front fork assembly" in line 2 and claim 28 recites the limitation "the upper convex wall" in line 2. There is insufficient antecedent basis for these limitations in the claims. Claims 17-23, 29 and 30 are also rejected for being dependent on their respective rejected base claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldberg (5,423,728).

As to claims 1-3, Goldberg discloses a frame for an exercise bicycle comprising a monoframe having an upper front end (4), a lower front end (A), a rear end (B), and a set of forks (13) wherein the upper front end is attached to the forks and the lower front end is in a fixed position relative to the forks as substantially claimed (see Col. 4, lines 63-68 & Appendix 1, Examiner's Version of Fig. 1).

As to claim 8, Goldberg discloses a frame as described above wherein the monoframe's lower front end and the fork's bottom end are attached to a first plate (C), the first plate is supported on a front base (D), the rear portion of the monoframe is attached to a second plate (E) that is supported on a rear base (F) (see Appendix 1).

As to claim 9, Goldberg discloses a frame as described above wherein the monoframe has a shape defined by a central body and a first extension therefrom defined by said monoframe and forming a top tube (G) (see Appendix 1).

6. Claim 10 is rejected under 35 U.S.C. 102(a) as being anticipated by Forcillo (6,669,603).

As to claim 10, Forcillo discloses a monocoque frame for an exercise bicycle comprising a rear support (A'), a top support (B') and a seat support (22) (see Appendix 2, Examiner's Version of Fig. 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg (5,423,728) in view of Bowden (3,233,916).

As to claims 4 and 7, Goldberg discloses a frame as described above (see discussion of claim 1). Goldberg does not disclose that the frame is a hollow body defined by two panels rigidly attached together to define a space there between. Bowden discloses a bicycle frame composed of two panels rigidly attached to define a space there between (see Col. 1, lines 42-46 & Figs. 1-12). At the time of the invention, it would have been obvious to a person of ordinary skill in the exercise art to make Goldberg's frame from two panels since the practice making such frames from two

panels is well known in the art and such a construction may allow for lighter materials to be used for ease of transport while maintaining a rigid and strong support structure.

As to claims 5 and 6, Goldberg and Bowden disclose a modified frame as described above (see discussion of claim 4). Bowden discloses that the frame panels can be made from stamped sheet metals which would broadly encompass stamped steel that are held together by an adhesive (see Col. 3, lines 4-19). Bowden does not disclose that the panels are seam welded together. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to weld the panels together because the act of welding or using an adhesive to connect the panels are considered to be functionally equivalent in providing a rigid connection there between.

8. Claims 11, 16, 17, 24-27, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forcillo (6,669,603) in view of Bowden (3,233,916).

As to claims 11 and 24-27, Forcillo discloses a frame as described above (see discussion of claim 10). Forcillo discloses a seat tube as substantially claimed (28) but he does not disclose that the frame is a hollow body defined by two panels rigidly attached together to define a space there between. Bowden discloses a bicycle frame comprised of two panels rigidly attached to define a space there between and a seat support that defines a front (C'') and a rear (D'') concave wall as substantially claimed (see Col. 1, lines 42-46 & Appendix 3, Examiner's Version of Fig.12). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Forcillo's frame from two panels since the practice making such frames from two panels

is well known in the exercise art and such a construction may allow for lighter materials to be used for ease of transport while maintaining a rigid and strong support structure.

As to claims 16 and 17, Forcillo discloses a frame as described above (see description of claim 11). Forcillo further discloses that the top support (B') extends generally forwardly from the rear support and the frame further comprises a fork assembly (18) that is connected with the bottom (14) and top supports (A',B') (see Appendix 2).

As to claims 29 and 30, Forcillo and Bowden disclose a modified frame as described above (see discussion of claim 24). Forcillo further discloses that the frame panels each include an aperture for receiving a bottom bracket (78) that is connected with the seat tube wherein the bracket is configured to support a drive train (see Fig. 1).

9. Claims 12, 13, 18,19 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forcillo (6,669,603) in view of Harris (6,413,191).

As to claims 12, 13, 18,19 and 31-33, Forcillo discloses a frame as described above (see discussion of claims 10 and 16). Forcillo does not disclose that the rear, top and bottom supports define an upper convex wall and a lower concave wall such that the lower concave surface of the top support intersects the top concave surface of the bottom support. Harris et al disclose an exercise device having a frame that includes an upper convex wall (A''') and a lower concave wall (B''') (see Appendix 4, Examiner's Version of Fig. 2). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to make Forcillo's rear, top and bottom supports to have concave and convex characteristics since those characteristics are known in the art,

and Forcillo and Harris' shaped components are functionally equivalent in providing a rigid support structure to the frame and are thus interchangeable. Furthermore, a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

10. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forcillo (6,669,603) in view of Harris (6,413,191) and in further view of Lull et al (D474,252).

As to claims 14 and 15, Forcillo and Harris disclose a modified frame as described above (see discussion of claim 13). Forcillo does not disclose that the frame further includes a rear plate as substantially claimed. Lull et al. disclose an exercise device having a frame that includes a rear plate (A''') extending transversely from the rear support to laterally support the frame wherein the plate is attached to both the lower concave wall and the upper convex wall (see Appendix 5, Examiner's Version of Fig. 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add such a plate to Forcillo's frame since the addition of such plates is well known in the art to provide a more stable connection between the frame and transverse foot supports.

***Allowable Subject Matter***

11. Claims 20, 21 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



**Conclusion**

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Thompson et al. '228 disclose a bicycle frame having multiple convex and concave surfaces.

Forcillo '970 discloses an exercise device having plates for coupling the frame to front and rear transverse stabilizing supports.

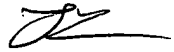
Robinson et al. '240, Devitt et al. '600, and Galasso et al. '121 are representative of the prior art that discloses bicycle frame made from panels that are coupled together.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784. The examiner can normally be reached on M-F, 9-5.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

October 7, 2004

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**JUSTINE R. YU**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**  
10/14/04